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**Producer's Dairy Foods, Inc. and Teamsters Local 853, International Brotherhood of Teamsters, AFI-CIO.** Case 32-CA-20253-1

April 2, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMLER, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 26, 2002, the General Counsel issued an amended complaint on January 16, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 32-RC-5044. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the amended complaint, and asserting affirmative defenses.

On February 5, 2003, the General Counsel filed a Motion for Summary Judgment. On February 11, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information, but contests the validity of the certification based on its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent's answer admits, that the Union requested the following information from the Respondent by letters dated November 21 and December 9, 2002:

- (1) Names and addresses of all Unit employees;
- (2) Hourly wage rates for each Unit employee;
- (3) Copy of the current health plan covering the Unit employees, including costs paid by Respondent and the employee for coverage;
- (4) Copy of any pension plans, profit sharing plans, 401(k) plans covering Unit employees and the amount paid into these plans by Respondent;
- (5) All documents outlining vacations, holidays, and any other terms and conditions of employment for Unit employees.

Although the Respondent's answer denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it is well established that all of the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Cheboygan Health Care Center*, 338 NLRB No. 115 (2003); *Baker Concrete Construction, Inc.*, 338 NLRB No. 48 (2002), and cases cited therein. The Respondent has not asserted any basis for rebutting the presumptive relevance of the information, apart from its contention, rejected above, that the Union's certification is invalid.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information.<sup>1</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times herein, the Respondent, a California corporation with a facility and an office located in San Leandro, California, has been engaged in the wholesale delivery and sale of milk products.

During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of

<sup>1</sup> Members Schaumber and Walsh did not participate in the underlying representation proceeding. However, they agree that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision made in the representation proceeding, and that summary judgment is appropriate.

its business operations, purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. The Certification

Following the election held August 30, 2002, the Union was certified on November 15, 2002, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time route salesmen, drivers, relief drivers, and route sales supervisors, employed by Respondent at its San Leandro, California facility; excluding all sales representatives, sales consultants, branch manager(s), route manager(s), merchandiser(s), employees performing work duties at Respondent's facility who are currently provided by temporary placement or employment agencies, office clerical employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

By letters dated November 21 and December 9, 2002, the Union requested the Respondent to bargain and to furnish information, and, since November 21, 2002, the Respondent has failed and refused to do so. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing on and after November 21, 2002, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided

by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Producer's Dairy Foods, Inc., San Leandro, California, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Failing and refusing to bargain with Teamsters Local 853, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time route salesmen, drivers, relief drivers, and route sales supervisors, employed by Respondent at its San Leandro, California facility; excluding all sales representatives, sales consultants, branch manager(s), route manager(s), merchandiser(s), employees performing work duties at Respondent's facility who are currently provided by temporary placement or employment agencies, office clerical employees, guards, and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on November 21 and December 9, 2002.

(c) Within 14 days after service by the Region, post at its facility in San Leandro, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice,

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals."

on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 21, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 2, 2003

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Teamsters Local 853, International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time route salesmen, drivers, relief drivers, and route sales supervisors, employed by us at our San Leandro, California facility; excluding all sales representatives, sales consultants, branch manager(s), route manager(s), merchandiser(s), employees performing work duties at our facility who are currently provided by temporary placement or employment agencies, office clerical employees, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on November 21 and December 9, 2002.

PRODUCER'S DAIRY FOODS, INC.